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OFFICE OF PETITIONS

In re Patent No. 7,758,890 : DECISION ON REQUEST FOR
Anderson et al. : RECONSIDERATION OF
Issue Date: July 20, 2010 : PATENT TERM ADJUSTMENT
Application No. 10/788,413 :
Filed: March 1, 2004 :
Attorney Docket No. 820.1020 :

This is a decision on the petition filed on July 29, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred fourteen (1114) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

Patentee is given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B). However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C.

154(b)(1)(B)(i) and (ii). Specifically, 37 CFR 1.703(b)(1) provides that the period of adjustment of the term of a patent shall not include the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B delay period, the over three year period begins on March 2, 2007, and ends on December 11, 2008, the day before the RCE was filed, and is 651 (not 652) days. See 35 U.S.C. 154(b)(1)(B)(i).

Accordingly, the patent term adjustment remains 1113 days.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

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